



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0167]

RIN 1625-AA00

Safety Zone; Patuxent River, Patuxent River, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Patuxent River. This action is necessary to provide for the safety of life on these navigable waters of the Patuxent River at Patuxent River, MD, during salvage operations of the vessel YP-702 on March 24, 2019 (with alternate of March 25, 2019, or March 26, 2019). This action prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 9 a.m. on March 24, 2019, through 4 p.m. on March 26, 2019. This rule will be enforced from 9 a.m. until 4 p.m. on March 24, 2019, or, in the case of inclement weather, on those same hours on March 25, 2019, or March 26, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0167 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The vessel YP-702, a 108-foot-long vessel with a wooden hull and aluminum superstructure, took on water and sank while anchored outside the channel in the Patuxent River at Patuxent River, MD. The vessel is presently lying in a sunken condition resting on the river bottom in 12 to 15 feet of water in approximate position latitude 38°18'03.96" N, longitude 076°27'39.90" W. Salvage operations will be taking place on March 24, 2019, with alternate dates of March 25, 2019, or March 26, 2019.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a

rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable and contrary to the public interest. Waiting to return the waterway to conditions that accommodate the safe, full resumption of boating and fishing in the immediate area is contrary to the public interest. It is impracticable to publish an NPRM because recovery assets will be on scene on or about March 24, 2019, and the safety zone needs to be in place at that time to protect vessels and persons in the vicinity of vessel salvage operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. Immediate action is needed to protect vessels, equipment and persons conducting diving and salvage operations of the vessel YP-702, as well as vessels transiting nearby, from the potential hazards associated with these operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with salvage operations will be a safety concern for anyone within 100 yards of the vessel YP-702 salvage operations. This rule is needed to protect personnel, vessels, equipment, and the marine environment in the navigable waters within the safety zone while the sunken vessel is being removed.

IV. Discussion of the Rule

This rule establishes a safety zone to be enforced from 9 a.m. to 4 p.m. on March 24, 2019, or if necessary due to inclement weather, those same hours on either March 25, 2019, or March 26, 2019. The safety zone covers all navigable waters of the Patuxent River within 100 yards of the vessel YP-702 in approximate position latitude 38°18'03.96" N, longitude 076°27'39.90" W, located at Patuxent River, MD. The duration and enforcement of the zone is intended to protect personnel, vessels, equipment, and the marine environment in these navigable waters while the sunken vessel is being removed. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and time-of-

year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Patuxent River for 7 total enforcement hours, during the month of March when vessel traffic in the Patuxent River is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone to be enforced for only seven hours during the vessel YP-702 salvage operations that will prohibit entry within 100 yards of vessels and equipment being used by personnel to remove the sunken vessel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0167 to read as follows:

§ 165.T05-0167 Safety Zone; Patuxent River, Patuxent River, MD.

(a) Location. The following area is a safety zone: All navigable waters of the Patuxent River within 100 yards of the vessel YP-702 in approximate position latitude 38°18'03.96" N, longitude 076°27'39.90" W, located at Patuxent River, MD. All coordinates refer to datum NAD 1983.

- (b) Definitions. As used in this section:

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this

section.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To request permission to enter, contact the COTP or the COTP's representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(4) The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 providing updates about the zone.

(d) Enforcement officials. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. This section will be enforced from 9 a.m. until 4 p.m. on March 24, 2019, or if necessary due to inclement weather, those same hours on either March 25, 2019, or March 26, 2019.

Dated: March 19, 2019.

Joseph B. Loring,
Captain, U.S. Coast Guard
Captain of the Port Maryland-National Capital Region.
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